

**OPINION
69-414**

August 1, 1969 (OPINION)

Mr. Bruce L. Bartch, Director

North Dakota Business and Industrial

Development Department

RE: Taxation - Exemption for New Industries - Existing Industries Not eligible

This is in response to your letter in which you ask for an opinion on Senate Bill No. 39, Chapter 385 of the 1969 Session Laws, which has now been codified as Chapter 40.57.1 of the North Dakota Century Code.

You ask whether or not the exemptions authorized in the above provision of law may be granted to a project that was actually in operation prior to July 1, 1969. You also ask if a cooperative corporation or a nonprofit corporation may qualify or come within the provisions of the above-mentioned Act.

The provisions of the Act do not in specific terms spell out whether or not the exemption applies only to corporations commencing activities on or after July 1, 1969. Nevertheless, from the language of the Act it appears that this matter was considered by the legislature. For example, under Section 40-57.1-01, "DECLARATION AND FINDING OF PUBLIC PURPOSE", amongst other things, provides as follows:

"* * * It is the intent of the legislative assembly that political subdivisions and the state board of equalization in their determination of whether the tax exemptions authorized by this chapter shall be granted, shall give due weight to their impact and effect upon existing industry and business to the end that an unfair advantage shall not be given to new enterprises which is to the substantial detriment of existing enterprises." (Underscoring ours.)

In Section 40-57.1-03, we find the following language relating to how the authorities may grant exemptions:

"* * * Negotiations with potential project operators for tax exemption shall be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if such project is proposed to be located outside the corporate limits of any city. * * *." (Underscoring ours.)

All legislation, unless it specifically provides otherwise, has prospective application only. But this rule alone would not specifically exclude applying the provisions of the law to projects which have actually commenced operations prior to July 1, 1969.

However, the language in Section 40-57.1-01, which was designed to protect existing enterprises, strongly suggests that existing enterprises or projects which were actually in operation prior to July 1, 1969, would not be considered for the tax exemption under the new Act. The language, "potential project operator", as found in Section 40-57.1-03 also suggests that the Act applies only to new projects which have not actually been in operation on July 1, 1969. The legislature apparently recognized that there might be industries or enterprises which are in existence and directed that tax exemption not be granted if it would create an unfair advantage to the substantial detriment of such existing enterprises or projects.

It is, therefore, our opinion that Senate Bill No. 39, Chapter 385 of the 1969 Session Laws, Chapter 40-57.1 of the North Dakota Century Code, does not authorize a tax exemption for businesses, industries or enterprises which were in existence and actually commenced operations prior to July 1, 1969.

As to the second question, Section 40-57.1-03 refers to "project operator" or to "projects." Nowhere in the Act do we find any limitation as to the type of project which may qualify for the tax exemption. The exemption is granted to a project if it otherwise qualifies without regard to its organization. It would include profit as well as nonprofit corporations and cooperative corporations as well as corporations.

It is, therefore, our opinion that cooperative corporations or nonprofit corporations come within the scope of Senate Bill No. 39, Chapter 385 of the 1969 Session Laws, which has been codified as Chapter 40-57.1 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General